Remarks

The Office Action of October 7, 2002, was carefully reviewed. Claims 7 through 17, and 19 have been cancelled, and Claims 1 through 6, 18, and 20 through 26 have been amended. Claims 1 through 6, 18, and 20 through 26 remain in the Application and are still pending. No new matter was presented and such amendments are deemed unobjectionable. Entry thereof is respectfully requested.

Claims 8, 12 through 17, and 19 were rejected under 35 U.S.C. §112. Each of these Claims have been cancelled.

The roll-up door assembly of the subject invention enables a garage to be used as an extra room. The assembly comprises the door cover, the opener mechanism, and the frame structure. A canvas roll-up door fits over the opening of the elongated entryway of the garage. The canvas includes screens covering window openings to enable ventilation throughout the room. The size of the window openings can be varied by using roll-up window covers with ties to adjust temperature and airflow within the garage. Velcro® is used to affix the canvas to the side members of the frame structure of the garage. The assembly can either be installed as a unit as an attachment that fits onto the front frame structure of a conventional garage or can be integral with the existing frame structure.

In the Office Action, the Examiner rejected independent Claim 1 under 35 U.S.C. §103 as being unpatentable over USPN 5,785,105 (Crider) in view of either USPN 5,193,602 (Morales) or USPN 3,251,399 (Grossman). Applicant's attorney respectfully traverses each of the 35 U.S.C. §103 rejections in view of Claim 1, as amended, is not an obvious improvement over the prior art. With respect to the rejections under 35 U.S.C. §103, it is noted in MPEP Section 706 that the standard of patentability to be followed in the examination of a patent application was enunciated by the Supreme Court in **Graham v. John Deere**, 148 USPQ 459 (1966), where the Court stated:

> Under Section 103, the scope and the content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.

Accordingly, to establish a prima facie case of obviousness, the Patent Office must: (1) set forth the differences in the claim over the applied references; (2) set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and (3) explain why the proposed modifications would be obvious to one of ordinary skill in the art. To satisfy step (3) above, the Patent Office must identify where the prior art provides a motivating suggestion, inference or implication to make the modifications proposed in step (2). **In Re Jones**, 21 U.S.P.Q2d 1941 (Fed. Cir. 1992).

The mere fact that the prior art may be modified by the Examiner does not make the modification obvious unless the prior art suggests to a person of ordinary skill in the art at the time the invention was made the desirability for the modification. **In re Fritch**, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In the present case, each of the three references pertain to window coverings and none are applicable to a roll-up door assembly for use to cover the entryway to a garage, enabling such garage to be used as an extra room. Accordingly, the prior art does not suggest to a person of ordinary skill in the art the desirability of the proposed modification.

In the Office Action, the Examiner rejected independent Claim 7 under 35 U.S.C. §102 as being anticipated by USPN 6,125,905 (Woodside) or by USPN 4,846,241 (Chomka); and rejected independent Claims 18 and 23 under 35 U.S.C. §102, as being anticipated by USPN 6,125,905 (Woodside).

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. §102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents, functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals of the Federal Circuit in **Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick,** 221 USPQ 481, 485 (1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. §102, the Court stated:

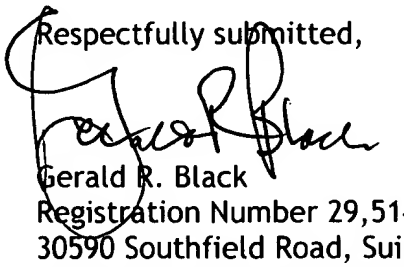
> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Independent Claim 7 has been cancelled. Independent Claims 18 and 23 have been modified to positively recite that the roll-up door assembly of the present invention is designed for use to cover the entryway to a garage, enabling such garage to be used as an extra room. Since Woodside '905 is a protective covering for a window, it clearly does not anticipate Claims 18 and 23.

In reviewing the five (5) references cited by the examiner, USPN 4,846,241 (Chomka) relates to a closure to a garage, whereas USPN 6,125,905 (Woodside); USPN 5,785,105 (Crider); USPN 5,193,602 (Morales); and USPN 3,251,399 (Grossman) relate to protective coverings for windows. Upon closer inspection, it can be seen that USPN 6,125,905 (Woodside); USPN 5,785,105 (Crider); USPN 5,193,602 (Morales); and USPN 3,251,399 (Grossman) make no mention of being applicable to garage door openings.

The only remaining independent claims, Claims 1, 18, and 23, have been modified to recite that the door cover is disposed about a garage frame structure, thereby enabling the garage to be used as an extra room. Since the only prior art cited in the subject Office Action relative to these three independent claims involves window covers, the undersigned believes that the pending claims are now in condition for allowance. Applicant respectively requests that Claims 1 through 6, 18, and 20 through 26, as amended, be formally allowed. If the Examiner is not persuaded that all issues are resolved, the undersigned respectfully requests that the Examiner initiate a telephone interview to attempt to resolve such remaining issues.

Respectfully submitted,



Gerald R. Black
Registration Number 29,514
30590 Southfield Road, Suite #160
Southfield, Michigan 48076

248.644.1014 phone
413.521.4703 fax